

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application
Serial No.: 76/098,180
Application Date: July 27, 2000
Trademark: UNIFIED COLLABORATION

10-01-2002

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #77

UNIFY CORPORATION,

Opposer,

v.

SINPAG INTERNATIONAL, INC.,

Applicant.

Opposition No: 91-150,466

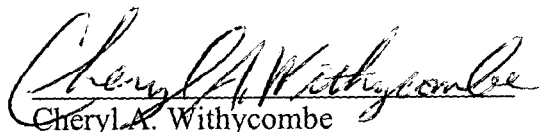
STIPULATED MOTION TO SUSPEND PROCEEDINGS

Pursuant to Trademark Rule 2.117(c), Opposer Unify Corporation and Applicant Sinpag International, Inc., through their respective attorneys, hereby request that the above-captioned proceedings be suspended for sixty (60) days. The parties are entering settlement discussions and the parties wish to have this opposition suspended, so that the parties will have sufficient time to discuss the possible settlement of this matter and to finalize and execute a settlement agreement with respect to the opposition. Applicant's counsel, Eric D. Cohen, consented to this suspension in a telephone conversation on October 1, 2002 with the undersigned.

As reflected by Section 510.03(b) of the Trademark Trial and Appeal Board Manual of Procedure and MacMillan Bloedel Ltd. v. Arrow-M Corp., 203 U.S.P.Q. 952 (T.T.A.B. 1979), the parties reserve their rights to request resumption of the proceedings at any time during the suspension period.

Respectfully submitted,

BAKER & McKENZIE

A handwritten signature in cursive script, reading "Cheryl A. Withycombe". The signature is written in dark ink and is positioned above the printed name.

Cheryl A. Withycombe

Attorney for Applicant

Baker & McKenzie

101 West Broadway

12th Floor

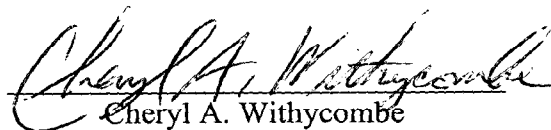
San Diego, California 92101

(619) 236-1441

Date: October 1, 2002

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing **STIPULATED MOTION TO SUSPEND PROCEEDINGS** was served upon the attorneys of record by depositing a copy of the same with the United States Postal Service as First Class Mail, postage prepaid, in an envelope addressed to: Eric D. Cohen, Esq., Welsh & Katz Ltd., 120 S Riverside Plaza, 22nd Floor, Chicago, Illinois 60606-3913 on the 1st of October, 2002.


Cheryl A. Withycombe

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Opposition No: 91-150,466

Serial No.: 76/098,180

**OPPOSER'S MOTION TO REOPEN TIME
TO ANSWER THE COUNTERCLAIM TO THE OPPOSITION**

NOW COMES Opposer, Unify Corporation, by and through its attorneys in this regard, BAKER & MCKENZIE, and hereby moves to reopen the time set by the Board for answering the Counterclaim to the Notice of Opposition pursuant to §509.01 of the Trademark Trial and Appeal Board Manual of Procedure ("TBMP") and the Federal Rules of Civil Procedure Rule 6(b). In support of its Motion, Opposer states as follows:

1. On July 27, 2000, Applicant filed an application to register the mark UNIFIED COLLABORATION for goods in International Class 9. The application was published for opposition on October 23, 2001, and an extension of time to oppose was received by the Patent and Trademark Office ("PTO") on November 21, 2001.

2. Opposer filed a Notice of Opposition with the Trademark Trial and Appeal Board ("TTAB") on December 21, 2001.

3. On May 14, 2002, Opposer's attorney telephoned the TTAB and determined that an answer to the Notice of Opposition had not yet been filed. At that time, Opposer's attorney

also informed the TTAB that the correspondent name and address for the Opposer's attorney was incorrectly listed as Deborah Bailey-Wells of Baker & McKenzie's San Francisco office and that the proper name and address is that of the undersigned.

4. On May 15, 2002, the TTAB issued a notice of default and granted Applicant thirty days to show cause why judgment by default should not be entered against Applicant.

5. On May 21, 2002, Opposer received the notice of default from the TTAB. The Notice of Default was again improperly addressed. On or about May 23, 2002, Opposer's attorney again telephoned the TTAB to inform the Interlocutory Attorney that the proper name and address of Opposer's attorney is that of the undersigned.

6. On June 14, 2002, Applicant filed: 1) a Response to the Board's Notice of Default and Order to Show Cause; Applicant's Motion that its Late-Filed Answer be Accepted; and 2) an Answer to Notice of Opposition with Affirmative Defenses and Counterclaim. Opposer received a copy of these papers directly from Applicant's attorney.

7. On July 15, 2002, the TTAB issued an order allowing Applicant thirty days to perfect the counterclaim by submitting the proper fee.

8. On September 11, 2002, Applicant phoned Opposer to inquire whether Opposer had filed a response to the outstanding counterclaim and informed Opposer that the deadline to respond had already passed. Opposer never received the order from the TTAB that stated the deadline to answer the counterclaim to the Notice of Opposition.

9. Pursuant to §509.01 TBMP, Opposer must show that "its failure to act during the time allowed therefor was the result of excusable neglect." According to the Trademark Trial and Appeal Board ("TTAB"), the determination of whether a party's neglect is excusable is "at bottom an equitable one, taking account of all relevant circumstances surrounding the

party's omission. These include ... the danger of prejudice to the [nonmovant], the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." *Pumpkin, Ltd. v. The Seed Corps*, 43 U.S.P.Q.2d (BNA) 1582 (TTAB 1997).

10. Opposer hereby attaches as Exhibit A, the Declaration of Cheryl A. Withycombe as statements outlining the circumstances under which Opposer did not receive notice of the deadline to file an Answer to the Counterclaim to the Notice of Opposition.

11. In this case, Opposer respectfully submits that the relevant circumstances all indicate that Opposer's subject Motion to Reopen the Time to File its Answer to the Counterclaim to the Notice of Opposition is warranted. There is no danger of prejudice to the nonmovant since the TTAB has not issued a notice of default or otherwise issued any orders pertaining to this Opposition, which means that the Applicant has not relied upon the TTAB's determination in proceeding with the use of Applicant's mark. Moreover, the length of the delay is minimal because the Opposer is filing the enclosed answer within two months of the deadline set by the TTAB. These factors also weigh in favor of allowing the time period to reopen. The undersigned counsel was likely not served with the order issuing the deadline to Answer the Counterclaim from the TTAB due to the improper correspondent address, the undersigned counsel proactively tried to correct the correspondent address twice, and the undersigned counsel acted to Answer the Counterclaim and file this Motion within days of discovering that a deadline to answer had expired.

12. Also attached with this Motion is a Stipulated Motion to Suspend the Opposition Proceedings. In the unlikely event that the parties are unable to reach a settlement of this

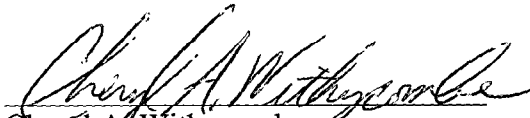
matter, Opposer prays for an additional thirty (30) days following the resumption of the proceedings in order to file an Answer to Applicant's Counterclaim to the Opposition.

13. Under similar circumstances, the TTAB has allowed the movant to reopen the relevant time period. *See, e.g., T.M. Pacific Co., Ltd. v. The Body Shop Int'l PLC*, 1999 TTAB LEXIS 149, at *4-5 (TTAB Apr. 5, 1999) (allowing the motion to reopen time to perfect its counterclaim after a two month delay because the attorney of record never received a copy of the TTAB's order allowing 30 days to perfect its counterclaim); *Lifetime Prod. v. Palmer/Snyder Furniture Co.*, 1999 TTAB LEXIS 680, at *1-2 (TTAB Nov. 29, 1999) (granting a motion to reopen discovery on the grounds that the counsel of record did not receive a confirmation from the TTAB of the approved discovery and trial schedule).

WHEREFORE, Opposer respectfully requests that its Motion to Reopen Time to Answer the Counterclaim is granted.

Respectfully submitted,

UNIFY CORPORATION


Cheryl A. Withycombe

Attorney for Opposer
BAKER & MCKENZIE
101 West Broadway, 12th Floor
San Diego, California 92101
(619) 236-1441

Date: 10-1, 2002

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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UNIFY CORPORATION,

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10-01-2002

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #77

Opposition No: 91-150,460

Serial No.: 76/098,180

Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513
Attn: TTAB

DECLARATION OF CHERYL A. WITHYCOMBE

I, Cheryl A. Withycombe, being duly sworn, declare and swear that:

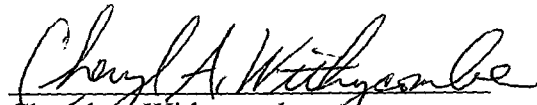
1. I am an attorney at Baker & McKenzie in San Diego, California.
2. I represent the Opposer, Unify Corporation, and am the custodian of Opposer's trademark records worldwide for its various UNIFY trademark applications and registrations.
3. On May 14, 2002, I telephoned the Trademark Trial and Appeal Board ("TTAB") and informed them that although the Notice of Opposition was filed by Mitchell Brook of the Baker & McKenzie San Diego office, that the correspondence was being sent to Deborah Bailey-Wells at the San Francisco office of Baker & McKenzie.
4. During the phone call on May 14, 2002, I informed the TTAB that I was now the attorney handling the case and that all correspondence should be sent to my attention in the San Diego office of Baker & McKenzie.

5. Mitchell Brook left the San Diego office of Baker & McKenzie in January 2002. Deborah Bailey-Wells was never an attorney in the San Diego office of Baker & McKenzie. Deborah Bailey-Wells was an attorney in the San Francisco office of Baker & McKenzie until May of 2001. Correspondence for both attorneys is sent to their new respective law firms.

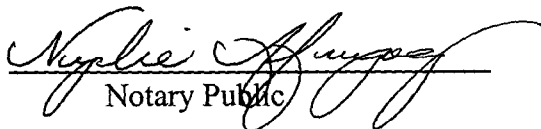
6. On September 11, 2002, I learned from a telephone call from Applicant's counsel that the thirty day deadline to answer the Counterclaim to the Notice of Opposition had already passed. I then learned from the Adversary Proceeding Data of the TTAB's Board Information System Index at <http://bisxext.uspto.gov/>, that the deadline to file an answer to the Counterclaim was August 18, 2002. A print out from this web page also shows that the correspondence address for this Opposition is still incorrectly listed as Deborah Bailey-Wells. Please find attached as Exhibit B, a print out of the Adversary Proceeding Data for this Opposition.

7. I declare under the penalty of perjury that the foregoing is true and correct.

October 1, 2002


Cheryl A. Withycombe

Sworn to and subscribed before me
this 1st day of October, 2002.


Notary Public



Adversary Proceeding Data

Proceeding Number: 91150466
Proceeding Status and Date: Pending 2002-01-16
Interlocutory Attorney Name: PETER W CATALDO
Proceeding Location: 845 - TTAB
Proceeding Location Date: 2002-07-11
Proceeding Charged To Location:
Proceeding Charged To Employee Name:
Date Proceeding Filed: 2001-12-21

Prosecution History

Entry#	Entry Date	Due Date	History Text
11	2002-06-14		DUPLICATE OF 005
10	2002-06-14		D'S MOTION TO ACCEPT LATE FILED ANSWER
9	2002-07-18		PL ALLOWED 30 DAYS TO ANSWER CC; TRIAL D ATES RESET
8	2002-07-10		DF'S FEE FOR COUNTERCLAIM
7	2002-07-15		NOT OF DEFAULT SET ASIDE; DF ALLOWED 30 DAYS TO FILE FEE W/CC; DATES REMAIN AS S
6	2002-06-14		DF'S RESPONSE TO THE NOTICE OF DEFAULT; MOT TO ACCEPT LATE ANSWER
5	2002-06-14		ANSWER, COUNTERCLAIM TO CANCEL, NO FEE
4	2002-05-15		NOTICE OF DEFAULT
3	2002-01-16		PENDING, INSTITUTED
2	2002-01-16	2002-02-25	NOTICE AND TRIAL DATES SENT; ANSWER DUE:
1	2001-12-21		FILED AND FEE

Defendant Name Information:**SINPAG INTERNATIONAL, INC.****Owner Address:****1013 CENTRE ROAD
WILMINGTON, DE 19805****Correspondence Address:****ERIC D COHEN
WELSH & KATZ LTD
120 S RIVERSIDE PLZ 22ND FL
CHICAGO, IL 60606-3913****Defendant Property Information:****Serial Number:** 76098180**Registration Number:** 0**International Classes:** 009

Application Status: 774 - Opposition pending
Application Status Date: 2002-01-16
Application Location: 650 - Publication And Issue Section
Application Date in Location: 2001-09-10
Law Office Assigned: L30 - TMEG Law Office 103
Attorney: ERIC D. COHEN
Domestic Representative:
Application Charged to Location:
Application Charged to Employee:
Registration Date:
Examiner Name: MICHELE LYNN SWAIN
Mark: UNIFIED COLLABORATION
Application Filing Date: 2000-07-27

Plaintiff Name Information:
UNIFY CORPORATION

Owner Address:
3927 LENNANE DRIVE
SACRAMENTO, CA 95834
Correspondence Address:
DEBORAH BAILEY-WELLS
BAKER & MCKENZIE
101 WEST BROADWAY, 12TH FLOOR
SAN DIEGO, CA 92101

Plaintiff Property Information:

Serial Number: 74245562
Registration Number: 1843232
International Classes: 041 042
Application Status: 702 - Registered - Section 8 (6-year) accepted & Section 15 acknowledged
Application Status Date: 2000-10-03
Application Location: 845 - TTAB
Application Date in Location: 2002-07-31
Law Office Assigned: J50 - TMEO Law Office # 05
Attorney: DEBORAH BAILEY-WELLS
Domestic Representative:
Application Charged to Location: 85N - TTAB Team D Pending Docket Shelf
Application Charged to Employee:
Registration Date: 1994-07-05
Examiner Name: JEAN MARC BRUN
Mark: UNIFY

Application Filing Date: 1992-02-11

Plaintiff Property Information:

Serial Number: 75278385
Registration Number: 2289276
International Classes: 009 041 042
Application Status: 700 - Registered
Application Status Date: 1999-10-26
Application Location: 845 - TTAB
Application Date in Location: 2002-07-31

Law Office Assigned: L90 - TMEG Law Office 109

Attorney: DEBORAH BAILEY-WELLS

Domestic Representative:

Application Charged to Location: 85N - TTAB Team D Pending Docket Shelf

Application Charged to Employee:

Registration Date: 1999-10-26

Examiner Name: JOAN L BISHOP

Mark: UNIFY VISION

Application Filing Date: 1997-03-24

Plaintiff Property Information:

Serial Number: 75278386

Registration Number: 2298547

International Classes: 009

Application Status: 700 - Registered

Application Status Date: 1999-12-07

Application Location: 845 - TTAB

Application Date in Location: 2002-07-31

Law Office Assigned: L90 - TMEG Law Office 109

Attorney: MAE Y. HO

Domestic Representative:

Application Charged to Location: 85N - TTAB Team D Pending Docket Shelf

Application Charged to Employee:

Registration Date: 1999-12-07

Examiner Name: JOAN L BISHOP

Mark: UNIFY VISION/WEB

Application Filing Date: 1997-03-24

Plaintiff Property Information:

Serial Number: 75720640

Registration Number: 2531160

International Classes: 009

Application Status: 700 - Registered

Application Status Date: 2002-01-22

Application Location: 845 - TTAB

Application Date in Location: 2002-07-31

Law Office Assigned: L10 - TMEG Law Office 101

Attorney: Mae Y. Ho

Domestic Representative:

Application Charged to Location: 85N - TTAB Team D Pending Docket Shelf

Application Charged to Employee:

Registration Date: 2002-01-22

Examiner Name: ROBERT J CROWE

Mark: UNIFY DATASERVER

Application Filing Date: 1999-06-03

TTAB

BAKER & MCKENZIE
TRADEMARK TRIAL AND
ATTORNEYS AT LAW
APPEALS BOARD

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03 OCT - 9 PM 9:44

SAN DIEGO, CALIFORNIA 92101-3890
TELEPHONE (619) 236-1441
FACSIMILE (619) 236-0429

Cheryl A. Withycombe
(619) 235-7768
cheryl.a.withycombe@bakernet.com

October 1, 2002

VIA EXPRESS MAIL NO. EL858182405US

BOX TTAB

NO FEE

Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

Re: Opposer : Unify Corporation
Opposition No. : 91-150,466
Applicant : Sinpag International, Inc.
Mark : UNIFIED COLLABORATION
Class : 9
Application No. : 76/098,180
Filing Date : July 27, 2000
Publication Date : October 23, 2001
Our File : 67123871-1002 (1008)

Dear Sir or Madam:

Enclosed please find an original and two copies of Opposer Unify Corporation's Motion to Reopen Time to Answer the Counterclaim to the Opposition and a Stipulated Motion to Suspend the Proceedings for sixty (60) days.

All correspondence in this case should be sent to:

Cheryl A. Withycombe, Esq.
BAKER & MCKENZIE
101 West Broadway, 12th Floor
San Diego, California 92101
(619) 236-1441

BAKER & M^cKENZIE
Commissioner for Trademarks
October 1, 2002

Please file-stamp and return the self-addressed postcard to this office for our records. Thank you.

Very truly yours,

BAKER & M^cKENZIE


Cheryl A. Withycombe*

*Licensed in Illinois, U.S.A. only, not licensed in California.